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U.S. EPA REGION 5
OFFICE OF REGIONAL ADMINISTRATOR IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
SOUTHERN DIVISION

#01, IN 2/4/99 E.5
Seymour
147005

UNITED STATES OF AMERICA,

Plaintiff,

v.

SEYMOUR RECYCLING CORPORATION,
et al.,

Defendants.

Civil Action No. IP-80-457-C

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), named Jellico Chemical Company ("Jellico" or "Defendant") as a Defendant in the Second Amended Complaint in the above-captioned, pursuant to Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, and Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9606 and § 9607, as amended.

B. In the Second Amended Complaint, the United States sought injunctive relief and reimbursement of response costs incurred by EPA and the United States Department of Justice ("DOJ") for actions taken in response to the release or threat of release of hazardous substances at the Seymour Recycling Corporation site (the "Site"), located at G Avenue West, Freeman Field, in Seymour, Indiana.

C. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and hazardous substances, within the meaning of Sections 101(14) and 101(33) of CERCLA, 42 U.S.C. §§ 9601(14) and 9601(33), were transported to and disposed of at the Site.

D. The release or threatened release of such hazardous substances, within the meaning of Sections 101(8) and 101(22) of

CERCLA, 42 U.S.C. §§ 9601(8) and 9601(22), at or from the Site has caused the United States to incur response costs.

E. Defendant has denied, and continues to deny, all legal and equitable liability under federal, state and local law in connection with this action.

F. Defendant maintains that it has insufficient resources to reimburse the United States for all response costs incurred in connection with the Site.

G. This Consent Decree ("Consent Decree") is entered into between the United States and the Defendant to resolve the United States' claim for reimbursement of Past Response Costs.

H. Except with respect to a proceeding brought to enforce the liability of Defendant under this Consent Decree, neither the execution nor entry of the Decree shall be construed to be an admission by the Defendant of liability for any purpose.

I. The United States and Defendant Jellico Chemical Company agree and this Court, by entering this Decree, finds that settlement of this matter will avoid prolonged and complicated litigation and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal jurisdiction

over Defendant Jellico Chemical Company. The Complaint states a claim upon which relief may be granted. Solely for the purposes of the Consent Decree and the underlying complaint, Defendant Jellico Chemical Company waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Defendant Jellico Chemical Company and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Defendant Jellico Chemical Company under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in the Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

"Consent Decree" ("Decree") shall mean this Decree and any attached appendices.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of Title 26 of the U.S. Code, in accordance with 42 U.S.C. § 9607(a), compounded on an annual basis.

"National Contingency Plan" ("NCP") shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including but not limited to any amendments thereto.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States and Defendant Jellico Chemical Company.

"Past Response Costs" shall mean all costs, including direct and indirect costs that EPA and DOJ incurred on or before December 31, 1996, for response actions in connection with the Site.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendant" shall mean Jellico Chemical Company.

"Site" shall mean the Seymour Recycling Corporation Superfund site, encompassing approximately 14 acres, located in Seymour, Jackson County, Indiana, and is designated by the following property description: the Northwest quarter of Section 25, Township 6 North, Range 5 East, in Jackson County, Indiana.

"United States" shall mean the government of the United States of America and all of its agencies and instrumentalities, including but not limited to the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Justice (DOJ) acting on behalf of the EPA.

V. REIMBURSEMENT OF PAST COSTS

4. Defendant Jellico Chemical Company shall pay to the United States the principal amount of Sixty One Thousand Dollars (\$61,000.00), interest of \$ 8,150.00 which accrued on that principal prior to April 1, 1997, and interest accruing on or after April 1, 1997, on any unpaid portion of the principal amount. Interest has accrued and is accruing on the principal amount at the rate set forth in 42 U.S.C. § 9607(a). Defendant shall effect the reimbursement as follows:

a) All payments shall be made by certified or cashier's check made payable to the "U.S. Department of Justice," and shall be delivered by certified mail with return receipt requested to the United States Attorney's Office for the Southern District of Indiana, Financial Litigation Unit, United States Courthouse, 5th Floor, 46 East Ohio Street, Indianapolis, Indiana 46204. The Payment shall reference

the CERCLA Site ID Number (05-01) and the United States Attorney's Office file number.

b) Within 30 days after entry of this Decree, Defendant shall pay \$5000.00 in principal, plus \$500.00 in interest that accrued prior to April 1, 1997, plus all interest accruing on or after April 1, 1997, on any and all unpaid principal, as specified further in the Attachment to this Decree.

c) On the first day of each month for the first twelve months following entry of this Decree, Defendant shall pay \$1,500.00 in principal, \$637.50 in interest that accrued prior to April 1, 1997, plus all interest accruing on or after April 1, 1997 on any and all unpaid principal, as specified in the Attachment to this Decree.

d) On the first day of each month for the 13th through 23rd months following entry of this Decree, Defendant shall pay \$1,500.00 in principal, plus all interest accruing on or after April 1, 1997, on any and all unpaid principal, as specified in the Attachment to this Decree.

e) On the first day of the 24th month following entry of this Decree, Defendant shall pay any remaining principal plus all interest accruing on or after April 1, 1997, on any and all unpaid principal, as specified in the Attachment to this Decree.

VI. FAILURE TO MAKE TIMELY PAYMENTS

5. Interest on Late Payments. In the event that any payments required by Section V are not made when due, Interest, as provided for in Paragraph 4, shall continue to accrue on the unpaid balance, through the date of payment.

6. If Defendant Jellico Chemical Company fails to make any payment on time and does not cure that failure within twenty (20) days of the original due date of the payment, then the full amount of the remaining balance, including all principal and accrued interest, shall be immediately due and payable to the United States.

7. If the United States files with the Court a motion or other application for any payment required by this Consent Decree and if the United States then secures a payment or an order directing payment of any portion of the amount sought by the motion or other application, Defendant Jellico Chemical Company shall reimburse the United States for all expenses, fees, and CERCLA response costs arising from such motion or other application, including but not limited to costs of attorney time.

VII. COVENANT NOT TO SUE BY PLAINTIFF

8. Covenant Not to Sue. Except as specifically provided in paragraph 9, the United States covenants not to sue Defendant under RCRA or CERCLA to recover Past Response Costs. This covenant not to sue extends only to the Defendant and does not extend to any other person. This covenant not to sue shall take effect upon receipt by the United States of all payments required

by paragraphs 4, 5, and 7 of this Consent Decree. Furthermore, this covenant is null and void in the event that any certification made under paragraph 22 is determined to have been inaccurate at the time that it was made.

9. Reservation of Rights.

a. General. The covenant not to sue set forth in the preceding paragraph does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Defendant Jellico Chemical Company with respect to all other matters. Except as provided in the preceding paragraph, nothing contained herein shall in any way limit or restrict the response and enforcement authority of the United States to initiate appropriate action, either judicial or administrative, under Sections 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9607, or any other provision of law, against Defendant Jellico Chemical Company or against any other person or entity not a party to this Decree.

b. Specific reservations. The covenant not to sue set forth in Paragraph 8 above does not apply, inter alia, to the following:

- (1) claims based upon failure of Defendant Jellico Chemical Company to meet the requirements of this Consent Decree;

- (2) claims for damages to natural resources, as defined in Section 101(6) of CERCLA, 42 U.S.C. § 9601(6);
- (3) claims for costs incurred by any natural resources trustees; and
- (4) claims based upon criminal liability.

VIII. COVENANTS BY THE DEFENDANT

10. Defendant Jellico Chemical Company hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to Past Response Costs or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA §§ 106(b)(2), 111, 112, or 113, or any other provision of law, or any claims arising out of response activities at the Site. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

IX. CLAIMS OR DEFENSES AGAINST NON-PARTIES

11. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. Each of the Parties expressly reserves any and all rights it may hold (including, but not limited to, any right to contribution under Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1)), defenses, claims, demands, and causes of action which each party may have with respect to

any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

X. RETENTION OF RECORDS

12. Until 10 years after the entry of this Consent Decree, Defendant Jellico Chemical Company shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

13. At the conclusion of this document retention period, Defendant Jellico Chemical Company shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Defendant shall deliver any such records or documents to the EPA. Defendant Jellico Chemical Company may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege applicable to Jellico and recognized by federal law.

14. Defendant Jellico Chemical Company hereby certifies that it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the filing of suit against it regarding the Site.

XI. DISMISSAL

15. The United States' claims pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, and Section 106 of CERCLA, 42 U.S.C. § 9606, having been pleaded in the Second Amended Complaint, are hereby dismissed without prejudice against the Defendant.

XII. WAIVER OF CLAIMS

16. In any subsequent administrative or judicial proceeding initiated by the United States or its instrumentalities for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Defendant Jellico Chemical Company shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this paragraph affects the enforceability of the covenant not to sue set forth in Paragraph 8.

XIII. NOTICES AND SUBMISSIONS

17. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice

requirement of the Consent Decree with respect to the United States and Defendant Jellico Chemical Company, respectively.

As to the United States -- Notice to EPA and DOJ:

For DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ No. 62-26S-19

For EPA:

Constandina A. Kallos
Assistant Regional Counsel
U.S. Environmental Protection Agency
Office of Regional Counsel
77 West Jackson Boulevard
C-29A
Chicago, IL 60604

As to Defendant:

Victor L. Baltzell
Miller, Mosley, Clare & Townes
730 West Main Street
Suite 500
Louisville, KY 40202

XIV. RETENTION OF JURISDICTION

18. This Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Consent Decree.

XV. APPENDIX

19. The Appendix attached hereto is hereby incorporated into this Consent Decree.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

20. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and

comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Defendant Jellico Chemical Company consents to the entry of this Consent Decree without further notice.

21. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVII. CERTIFICATION

22. Defendant Jellico Chemical Company certifies, subject to the penalties for perjury under the laws of the United States, that Defendant has supplied to EPA all financial records requested by that Agency, and that the records so provided constitute a fair and accurate depiction of Defendant's current financial condition.

XVIII. SIGNATORIES/SERVICE


23. The undersigned representative of Defendant Jellico Chemical Company certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

24. Defendant Jellico Chemical Company shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service on behalf of that party with

respect to all matters arising under or relating to this Consent Decree.

IT IS SO ORDERED, ADJUDGED, AND DECREED

THIS 4 DAY OF FEB, 1997



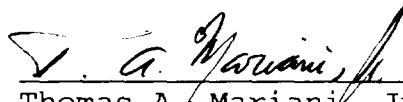
UNITED STATES DISTRICT JUDGE

Signature Page for Consent Decree with Jellico Chemical Co., in
Civil Action No. IP-80-457-C, Seymour Recycling (S.D. Indiana)

FOR THE UNITED STATES OF AMERICA

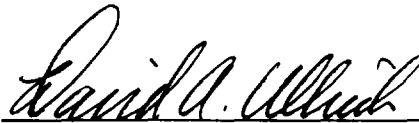


Joel M. Gross
Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice

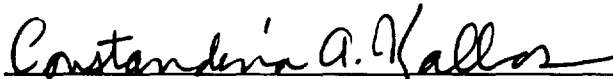


Thomas A. Mariani, Jr.
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
202-514-4620

Signature Page for Consent Decree with Jellico Chemical Co., in
Civil Action No. IP-80-457-C, Seymour Recycling (S.D. Indiana)



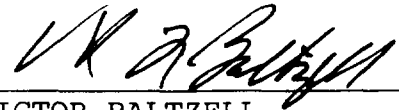
DAVID A. ULLRICH
Acting Regional Administrator
U.S. Environmental Protection
Agency
Region V
Chicago, Illinois



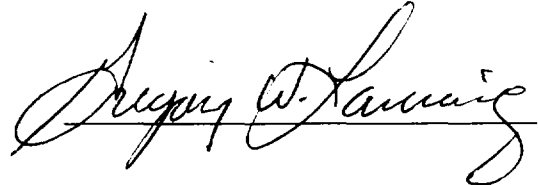
CONSTANDINA A. KALLOS
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region V
Chicago, Illinois

Signature Page for Consent Decree with Jellico Chemical Co., in
Civil Action No. IP-80-457-C, Seymour Recycling (S.D. Indiana)

FOR DEFENDANT



VICTOR BALTZELL
Miller, Mosley, Clare &
Townes
730 West Main Street
Suite 500
Louisville, KY 40202



Jellico Chemical Company

Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name:

Title:

Address:

Victor A. Baltzell
Attorney
Seize to show

APPENDIX

Consent Decree with Jellico Chemical Co., in Civil Action No. IP-80-457-C, Seymour Recycling (S.D. Indiana)

- 1) The following instructions are provided in furtherance of Defendant's performance under Sections V and VI of the Decree. In the event of any conflict between these instructions and any other part of the Decree, the Decree shall control.
- 2) Payment schedule remains as specified in Section VI of the Decree.
- 3) Interest shall be calculated on all unpaid amounts and such interest shall be paid with each principal payment, including the initial lump sum payment and each of the following, twenty-four installment payments, as follows:

- $\frac{\text{Principal Balance} \times \text{Applicable Rate}}{365 \text{ Days}} = \text{Daily Interest Amount}$
- $\text{Daily Interest Amount} \times \text{Elapsed Days} = \text{Interest Amount Due}$
- To determine the rate, use the CERCLA statutory rate that applies to the fiscal year time period(s) covered by the interest calculation, that rate being one set for the U.S. Treasury's 52-week Treasury MK bills. This rate is adjusted every Fiscal Year

For Fiscal Year 1994 (ending September 30, 1994), the annual rate is 3.36 percent.

For Fiscal Year 1995 (ending September 30, 1995), the annual rate is 5.63 percent.

For Fiscal Year 1996 (ending September 30, 1996), the annual rate is 5.85 percent.

For Fiscal Year 1997 (ending September 30, 1997), the annual rate is 5.70 percent.

For Fiscal Year 1998 and beyond, the U.S. Treasury rate has not been established but may be ascertained from publicly available information or by timely request directed to those identified in Par. No. 17 of the Decree.

- If a payment is not received by its Decree-mandated due date, then interest continues to accrue on the unpaid amounts and the "Elapsed Days" parameter must be adjusted accordingly in order to make the correct interest payment.